

109TH CONGRESS
1ST SESSION

H. R. 3726

To enhance prosecution of child pornography and obscenity by strengthening section 2257 of title 18, United States Code, to ensure that children are not exploited in the production of pornography, prohibiting distribution of child pornography used as evidence in prosecutions, authorizing assets forfeiture in child pornography and obscenity cases, expanding administrative subpoena power to cover obscenity cases, and prohibiting the production of obscenity, as well as its transportation, distribution, and sale, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 12, 2005

Mr. PENCE introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To enhance prosecution of child pornography and obscenity by strengthening section 2257 of title 18, United States Code, to ensure that children are not exploited in the production of pornography, prohibiting distribution of child pornography used as evidence in prosecutions, authorizing assets forfeiture in child pornography and obscenity cases, expanding administrative subpoena power to cover obscenity cases, and prohibiting the production of obscenity, as well as its transportation, distribution, and sale, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Child Pornography Prevention Act of 2005”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title.

Sec. 2. Findings.

Sec. 3. Strengthening section 2257 to ensure that children are not exploited in
the production of pornography.

Sec. 4. Prevention of distribution of child pornography used as evidence in
prosecutions.

Sec. 5. Authorizing civil and criminal asset forfeiture in child exploitation and
obscenity cases.

Sec. 6. Enhancing administrative subpoena power to cover obscenity.

Sec. 7. Prohibiting the production of obscenity as well as transportation, dis-
tribution, and sale.

8 **SEC. 2. FINDINGS.**

9 Congress makes the following findings:

10 (1) The effect of the intrastate production,
11 transportation, distribution, receipt, advertising, and
12 possession of child pornography on interstate market
13 in child pornography.

14 (A) The illegal production, transportation,
15 distribution, receipt, advertising and possession
16 of child pornography, as defined in section
17 2256(8) of title 18, United States Code, as well
18 as the transfer of custody of children for the
19 production of child pornography, is harmful to
20 the physiological, emotional, and mental health

1 of the children depicted in child pornography
2 and has a substantial and detrimental effect on
3 society as a whole.

4 (B) A substantial interstate market in
5 child pornography exists, including not only a
6 multimillion dollar industry, but also a nation-
7 wide network of individuals openly advertising
8 their desire to exploit children and to traffic in
9 child pornography. Many of these individuals
10 distribute child pornography with the expecta-
11 tion of receiving other child pornography in re-
12 turn.

13 (C) The interstate market in child pornog-
14 raphy is carried on to a substantial extent
15 through the mails and other instrumentalities
16 of interstate and foreign commerce, such as the
17 Internet. The advent of the Internet has greatly
18 increased the ease of transporting, distributing,
19 receiving, and advertising child pornography in
20 interstate commerce. The advent of digital cam-
21 eras and digital video cameras, as well as video-
22 tape cameras, has greatly increased the ease of
23 producing child pornography. The advent of in-
24 expensive computer equipment with the capacity
25 to store large numbers of digital images of child

1 pornography has greatly increased the ease of
2 possessing child pornography. Taken together,
3 these technological advances have had the un-
4 fortunate result of greatly increasing the inter-
5 state market in child pornography.

6 (D) Intrastate incidents of production,
7 transportation, distribution, receipt, advertising,
8 and possession of child pornography, as well as
9 the transfer of custody of children for the pro-
10 duction of child pornography, have a substantial
11 and direct effect upon interstate commerce be-
12 cause:

13 (i) Some persons engaged in the pro-
14 duction, transportation, distribution, re-
15 ceipt, advertising, and possession of child
16 pornography conduct such activities en-
17 tirely within the boundaries of one State.
18 These persons are unlikely to be content
19 with the amount of child pornography they
20 produce, transport, distribute, receive, ad-
21 vertise, or possess. These persons are
22 therefore likely to enter the interstate mar-
23 ket in child pornography in search of addi-
24 tional child pornography, thereby stimu-

1 lating demand in the interstate market in
2 child pornography.

3 (ii) When the persons described in
4 subparagraph (D)(i) enter the interstate
5 market in search of additional child por-
6 nography, they are likely to distribute the
7 child pornography they already produce,
8 transport, distribute, receive, advertise, or
9 possess to persons who will distribute addi-
10 tional child pornography to them, thereby
11 stimulating supply in the interstate market
12 in child pornography.

13 (iii) Much of the child pornography
14 that supplies the interstate market in child
15 pornography is produced entirely within
16 the boundaries of one State, is not trace-
17 able, and enters the interstate market sur-
18 reptitiously. This child pornography sup-
19 ports demand in the interstate market in
20 child pornography and is essential to its
21 existence.

22 (E) Prohibiting the intrastate production,
23 transportation, distribution, receipt, advertising,
24 and possession of child pornography, as well as
25 the intrastate transfer of custody of children for

1 the production of child pornography, will cause
2 some persons engaged in such intrastate activi-
3 ties to cease all such activities, thereby reducing
4 both supply and demand in the interstate mar-
5 ket for child pornography.

6 (F) Federal control of the intrastate inci-
7 dents of the production, transportation, dis-
8 tribution, receipt, advertising, and possession of
9 child pornography, as well as the intrastate
10 transfer of children for the production of child
11 pornography, is essential to the effective control
12 of the interstate market in child pornography.

13 (2) The importance of protecting children from
14 repeat exploitation in child pornography:

15 (A) The vast majority of child pornography
16 prosecutions today involve images contained on
17 computer hard drives, computer disks, and re-
18 lated media.

19 (B) Child pornography is not entitled to
20 protection under the First Amendment and
21 thus may be prohibited.

22 (C) The Government has a compelling
23 State interest in protecting children from those
24 who sexually exploit them, and this interest ex-

1 tends to stamping out the vice of child pornog-
2 raphy at all levels in the distribution chain.

3 (D) Every instance of viewing images of
4 child pornography represents a renewed viola-
5 tion of the privacy of the victims and a repeti-
6 tion of their abuse.

7 (E) Child pornography constitutes prima
8 facie contraband, and as such should not be dis-
9 tributed to, or copied by, child pornography de-
10 fendants or their attorneys.

11 (F) It is imperative to prohibit the repro-
12 duction of child pornography in criminal cases
13 so as to avoid repeated violation and abuse of
14 victims, so long as the Government makes rea-
15 sonable accommodations for the inspection,
16 viewing, and examination of such material for
17 the purposes of mounting a criminal defense.

18 **SEC. 3. STRENGTHENING SECTION 2257 TO ENSURE THAT**
19 **CHILDREN ARE NOT EXPLOITED IN THE PRO-**
20 **DUCTION OF PORNOGRAPHY.**

21 Section 2257 of title 18 of the United States Code
22 is amended—

23 (1) in subsection (a)(1), by striking “actual”;

24 (2) in subsection (b), by striking “actual”;

1 (3) in subsection (f)(4)(A), by striking “ac-
2 tual”;

3 (4) by amending paragraph (1) of subsection
4 (h) to read as follows:

5 “(1) the term ‘sexually explicit conduct’ has the
6 meaning set forth in subparagraphs (A)(i) through
7 (v) of paragraph (2) of section 2256 of this title;”;

8 (5) in subsection (h)(4), by striking “actual.”;

9 (6) in subsection (f)—

10 (A) at the end of paragraph (3), by strik-
11 ing “and”;

12 (B) at the end of paragraph (4)(B), by
13 striking the period and inserting “; and”; and

14 (C) by inserting after paragraph (4)(B)
15 the following new paragraph:

16 “(5) for any person to whom subsection (a) ap-
17 plies to refuse to permit the Attorney General or his
18 or her delegee to conduct an inspection under sub-
19 section (c).”.

20 (7) in subsection (h)(3), by striking “to
21 produce, manufacture, or publish any book, maga-
22 zine, periodical, film, video tape, computer generated
23 image, digital image, or picture, or other similar
24 matter and includes the duplication, reproduction, or
25 reissuing of any such matter, but does not include

1 mere distribution or any other activity which does
2 not involve hiring, contracting for managing or oth-
3 erwise arranging for the participation of the per-
4 formers depicted” and inserting “actually filming,
5 videotaping, photographing; creating a picture, dig-
6 ital image, or digitally- or computer-manipulated
7 image of an actual human being; or digitizing an
8 image, of a visual depiction of sexually explicit con-
9 duct; or, assembling, manufacturing, publishing, du-
10 plicating, reproducing, or reissuing a book, maga-
11 zine, periodical, film, videotape, digital image, or pic-
12 ture, or other matter intended for commercial dis-
13 tribution, that contains a visual depiction of sexually
14 explicit conduct; or, inserting on a computer site or
15 service a digital image of, or otherwise managing the
16 sexually explicit content, of a computer site or serv-
17 ice that contains a visual depiction of, sexually ex-
18 plicit conduct”;

19 (8) in subsection (a), by inserting after “video-
20 tape,” the following: “digital image, digitally- or
21 computer-manipulated image of an actual human
22 being, or picture,”; and

23 (9) in subsection (f)(4), by inserting after
24 “video” the following: “digital image, digitally- or

1 computer-manipulated image of an actual human
2 being, or picture.”.

3 **SEC. 4. PREVENTION OF DISTRIBUTION OF CHILD PORNOG-**
4 **RAPHY USED AS EVIDENCE IN PROSECU-**
5 **TIONS.**

6 Section 3509 of title 18, United States Code, is
7 amended by adding at the end the following:

8 “(m) PROHIBITION ON REPRODUCTION OF CHILD
9 PORNOGRAPHY.—

10 “(1) In any criminal proceeding, any property
11 or material that constitutes child pornography (as
12 defined by section 2256 of this title) must remain in
13 the care, custody, and control of either the Govern-
14 ment or the court.

15 “(2)(A) Notwithstanding rule 16 of the Federal
16 Rules of Criminal Procedure, a court shall deny, in
17 any criminal proceeding, any request by the defend-
18 ant to copy, photograph, duplicate, or otherwise re-
19 produce any property or material that constitutes
20 child pornography (as defined by section 2256 of
21 this title), so long as the Government makes the
22 property or material reasonably available to the de-
23 fendant.

24 “(B) For the purposes of subparagraph (A),
25 property or material shall be deemed to be reason-

1 ably available to the defendant if the Government
2 provides ample opportunity for inspection, viewing,
3 and examination at a Government facility of the
4 property or material by the defendant, his or her at-
5 torney, aid any individual the defendant may seek to
6 qualify to furnish expert testimony at trial.”.

7 **SEC. 5. AUTHORIZING CIVIL AND CRIMINAL ASSET FOR-**
8 **FEITURE IN CHILD EXPLOITATION AND OB-**
9 **SCENITY CASES.**

10 (a) CONFORMING FORFEITURE PROCEDURES FOR
11 OBSCENITY OFFENSES.—Section 1467 of title 18, United
12 States Code, is amended—

13 (1) in subsection (a)(3), by inserting a period
14 after “of such offense” and striking all that follows;
15 and

16 (2) by striking subsections (b) through (n) and
17 inserting the following:

18 “(b) The provisions of section 413 of the Controlled
19 Substance Act (21 U.S.C. 853) with the exception of sub-
20 section (d), shall apply to the criminal forfeiture of prop-
21 erty pursuant to subsection (a).

22 “(c) Any property subject to forfeiture pursuant to
23 subsection (a) may be forfeited to the United States in
24 a civil case in accordance with the procedures set forth
25 in chapter 46 of this title.”.

1 (b) AMENDMENTS TO CHILD EXPLOITATION FOR-
2 FEITURE PROVISIONS.—

3 (1) CRIMINAL FORFEITURE.—Section 2253(a)
4 of title 18, United States Code, is amended—

5 (A) in the matter preceding paragraph (1)
6 by—

7 (i) inserting “or who is convicted of
8 an offense under sections 2252B or 2257
9 of this chapter,” after “2260 of this chap-
10 ter”;

11 (ii) inserting “, or 2425” after
12 “2423” and striking “or” before “2423”;
13 and

14 (iii) inserting “or an offense under
15 chapter 109A” after “of chapter 117”; and

16 (B) in paragraph (I), by inserting “,
17 2252A, 2252B or 2257” after “2252”.

18 (2) CIVIL FORFEITURE.—Section 2254(a) of
19 title 18, United States Code, is amended—

20 (A) in paragraph (1), by inserting “,
21 2252A, 2252B, or 2257” after “2252”;

22 (B) in paragraph (2)—

23 (i) by striking “or” and inserting “of”
24 before “chapter 117”;

1 (ii) by inserting “, or an offense under
2 section 2252B or 2257 of this chapter,”
3 after “Chapter 117,” and

4 (iii) by inserting “, or an offense
5 under chapter 109A” before the period;
6 and

7 (C) in paragraph (3) by—

8 (i) inserting “, or 2425” after “2423”
9 and striking “or” before “2423”; and

10 (ii) inserting “, a violation of section
11 2252B or 2257 of this chapter, or a viola-
12 tion of chapter 109A” before the period.

13 (c) AMENDMENTS TO RICO.—Section 1961(1)(B) of
14 title 18, United States Code, is amended by inserting
15 “2252A, 2252B,” after “2252”.

16 **SEC. 6. ENHANCING ADMINISTRATIVE SUBPOENA POWER**
17 **TO COVER OBSCENITY.**

18 Section 3486(a)(1) of title 18, United States Code,
19 is amended—

20 (1) in subparagraph (A)(i), by striking “chil-
21 dren,” and inserting “children; or (III) a Federal of-
22 fense involving the distribution of obscenity,”; and

23 (2) by inserting after subparagraph (D) the fol-
24 lowing:

1 “(E) As used in this paragraph, the term
2 ‘Federal offense involving the distribution of ob-
3 scenity’ means an offense under section 1460,
4 1461, 1462, 1465, 1466, 1468, or 1470.”.

5 **SEC. 7. PROHIBITING THE PRODUCTION OF OBSCENITY AS**
6 **WELL AS TRANSPORTATION, DISTRIBUTION,**
7 **AND SALE.**

8 (a) SECTION 1465.—Section 1465 of title 18 of the
9 United States Code is amended—

10 (1) by inserting “**Production and**” before
11 “**Transportation**” in the heading of the section;

12 (2) by inserting “produces with the intent to
13 transport, distribute, or transmit in interstate or
14 foreign commerce, or whoever knowingly” after
15 “whoever knowingly” and before “transports or trav-
16 els in”; and

17 (3) by inserting a comma after “in or affecting
18 such commerce”.

19 (b) SECTION 1466.—Section 1466 of title 18 of the
20 United States Code is amended—

21 (1) in subsection (a), by inserting “producing
22 with intent to distribute or sell, or” before “selling
23 or transferring obscene matter,”;

1 (2) in subsection (b), by inserting, “produces”
2 before “sells or transfers or offers to sell or transfer
3 obscene matter”; and

4 (3) in subsection (b) by inserting “production,”
5 before “selling or transferring or offering to sell or
6 transfer such material.”.

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